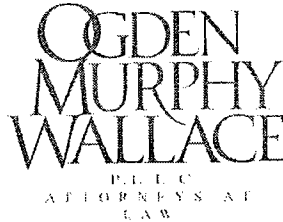


EXHIBIT 3



EMILY HARRIS GANT
egant@omwlaw.com
206.447.7204

April 12, 2010

VIA EMAIL AND U.S. MAIL

Marty McLean
HAGENS BERMAN SOBOL SHAPIRO
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Re: *Erickson v. MicroAire*

Dear Mr. McLean:

This confirms our recent efforts to meet and confer regarding MicroAire's Responses to Requests for Admission.

I asked that we address each response to which you objected. You stated that this was not appropriate. Instead, you pointed to your April 9, 2010 letter, in which you addressed MicroAire's response to Request for Admission No. 7, and stated that this example accurately summarized your concerns with Requests for Admission Nos. 3-14 and 19-23. In our conversation, you did not address the validity of MicroAire's objections, and did not identify places in Mr. Pascaloff's deposition which you claim to have quoted verbatim.

MicroAire made good faith responses to your clients' Requests for Admission. Notwithstanding this fact, I agreed to evaluate your concerns and amend our responses, if appropriate.

You demanded that we file amended responses by tomorrow, Tuesday, April 13, 2010. While I indicated my intent to timely amend, if appropriate, you refused to allow my client until the end of the week to do so. When asked the reason for this refusal, you indicated that the discovery cut-off is June 1, 2010, and that your clients needed time to complete discovery. The provision of any amendments by Friday, April 16, 2010 allows sufficient time to engage in discovery under the rules.

Finally, I was prepared to discuss the Chan IME, per my earlier letter. You refused to meet and confer on this topic, indicating that you did not receive a copy of my letter. I properly placed this issue on today's agenda, but was willing to timely reconvene the discovery conference as a courtesy. As discussed in Friday's discovery conference, however, we need to address the IME

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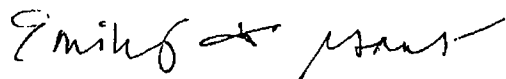
A Member of the International Lawyers Network with independent member law firms worldwide

Marty McLean
April 12, 2010
Page 2

issue promptly, such that we can either schedule the exams, or my client can file a motion to compel.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.

A handwritten signature in cursive script, appearing to read "Emily Harris Gant", written in dark ink.

Emily Harris Gant

EHG

cc: Tony Shapiro

EXHIBIT 4

HONORABLE FRANKLIN D. BURGESS

DECLARATION OF SERVICE

I hereby declare that I sent a copy of the document on which this declaration appears via fax/mail/messenger service to [Signature]

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, WA on 4/16/10
Signed by: [Signature]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TODD and ANNE ERICKSON, individually and
the marital community comprised thereof,

Plaintiffs,

v.

MICROAIRE SURGICAL INSTRUMENTS,
LLC, a Virginia Limited Liability Company doing
business in the State of Washington,

Defendant.

NO. C08-5745-FDB

PLAINTIFFS' FIRST REQUESTS FOR
ADMISSION WITH DEFENDANT'S
AMENDED RESPONSES THERETO

TO: Todd and Anne Erickson, Plaintiffs

AND TO: Tony Shapiro and Marty McLean, Attorneys for Plaintiffs

COMES NOW Defendant MicroAire Surgical Instruments, LLC ("MicroAire") and
submits its responses to Plaintiffs' First Requests for Admission as follows:

General Objections

These objections apply generally to all of the discovery requests.

Objection to Scope of Discovery Requests

Without limiting the generality of this objection, MicroAire objects to all discovery requests to the extent that they (1) go beyond the scope of discovery provided by the applicable Civil and Local Rules, or (2) are not reasonably calculated to lead to the discovery of admissible evidence.

{EHG781211.DOC;1\12459.000005\}

PLAINTIFFS' FIRST REQUESTS FOR ADMISSION WITH
AMENDED RESPONSES THERETO - 1

OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

Privileged and Trial Preparation Materials

MicroAire objects to all discovery requests to the extent they call for information or documents that fall within any relevant privilege, including the attorney/client privilege or the work product doctrine, or which constitute trial preparation materials within the meaning of the Civil and Local Rules.

No Waiver

Nothing set forth in MicroAire's specific objection is intended as or should be construed as a waiver of the above general objections, or of any other specific objection set forth.

II. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that John Pascaloff was the representative designated by MicroAire Surgical Instruments, LLC ("MicroAire") to appear in response to plaintiff's Second Amended Notice of 30(b)(6) Deposition.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 2: Admit that John Pascaloff was the only representative designated by MicroAire to appear in response to plaintiff's Second Amended Notice of 30(b)(6) Deposition.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 3: Admit that John Pascaloff is the Director of Engineering for MicroAire.

1 RESPONSE:

2 Objection. This request is vague as to timeframe. Notwithstanding and subject to these
3 objections, MicroAire responds as follows: Deny. Mr. Pascaloff's current title is "Engineering
4 Group Director."
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8 REQUEST FOR ADMISSION NO. 4: Admit that John Pascaloff has been the Director of
9 Engineering for MicroAire since at least 2001.

10 RESPONSE:

11 Deny. Admit that Mr. Pascaloff has been the Engineering Group Director since at least
12 2001.
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17 REQUEST FOR ADMISSION NO. 5: Admit that since 1997, John Pascaloff was the primary
18 signatory on all fault tree analysis conducted for power instruments manufactured by MicroAire.

19 RESPONSE:

20 Objection. The terms "primary" and "power instruments" are undefined and ambiguous.
21 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny Mr.
22 Pascaloff was the primary signatory on all fault tree analyses conducted for power instruments
23 manufactured by MicroAire. Since approximately 1997, Mr. Pascaloff served as a signatory on
24 fault tree analyses for the MicroAire 2910 pneumatic drill. Other persons also served as
25 signatories, including representatives from the marketing and quality assurance departments.
26

1 Additionally, other engineers served as signatories.
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4 REQUEST FOR ADMISSION NO. 6: Admit that the MicroAire 2910-100 is a power
5 instrument.
6

7 RESPONSE:

8 Objection. The term "power instrument" is undefined and vague. Notwithstanding and
9 subject to these objections, MicroAire responds as follows: Admit that the MicroAire 2910-100
10 is a pneumatic power instrument.
11
12

13 REQUEST FOR ADMISSION NO. 7: Admit that the only risk identified by John Pascaloff
14 arising from improper cleaning of the MicroAire 2910-100 was that the burr may become
15 overheated.
16

17 RESPONSE:

18 Objection. This request is vague and ambiguous. It does not indicate when Mr. Pascaloff
19 "identified" the risks addressed in this Request for Admission. Notwithstanding and subject to
20 these objections, MicroAire responds as follows: As to his deposition, deny that Mr. Pascaloff
21 identified an overheating burr as the only risk arising from improper cleaning. Deny that an
22 overheating burr is the only risk associated with improper cleaning and/or maintenance.
23 Improper cleaning and/or maintenance may cause performance problems. Improper
24 maintenance, including, but not limited to, third party repairs, may change the decibel level.
25
26

1 REQUEST FOR ADMISSION NO. 8: Admit that there is no record of MicroAire analyzing the
2 risk of excessive noise being generated by the MicroAire 2910-100 surgical drill prior to the
3 commencement of this lawsuit.

4 RESPONSE:

5 Objection. The term "excessive noise" is vague and undefined. Notwithstanding and
6 subject to these objections, MicroAire responds as follows: Admit. Deny noise excessive, given
7 the decibel level and duration of use. Deny recorded analysis necessary, given the decibel level
8 and duration of use.
9

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11 REQUEST FOR ADMISSION NO. 9: Admit that there is no record of MicroAire analyzing
12 whether the noise generated by the MicroAire 2910-100 surgical drill complied with applicable
13 OSHA standards prior to commencement of this lawsuit.

14 RESPONSE:

15 Objection. This request is vague and ambiguous, as it does not identify which "OSHA
16 standards" plaintiffs deem "applicable." Notwithstanding and subject to these objections,
17 MicroAire responds as follows: Admit. Deny recorded analysis necessary or required by OSHA,
18 given the decibel level and duration of use.
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22 REQUEST FOR ADMISSION NO. 10: Admit that MicroAire did not document whether
23 customers registered complaints regarding noise levels generated by its surgical drills prior to
24 commencement of this lawsuit.

25 RESPONSE:

26 Objection. The term "surgical drills" is undefined and vague. The MicroAire 2910

1 pneumatic drill is the only "surgical drill" relevant to this litigation. Notwithstanding and subject
2 to these objections, MicroAire responds as follows: Deny.

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5 REQUEST FOR ADMISSION NO. 11: Admit that MicroAire did not provide consumers with
6 any warnings that the 2910-100 surgical drill may generate excessive noise levels.

7 RESPONSE:

8 Objection. The term "excessive noise levels" is vague and undefined. Notwithstanding
9 and subject to these objections, MicroAire responds as follows: Deny noise levels were
10 excessive. Deny MicroAire had notice of "excessive noise levels." Deny MicroAire had a duty
11 to warn of an alleged risk of which it had no notice. Admit warnings did not address noise
12 levels. Deny such warnings were necessary, given the decibel level and duration of use.
13

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15 REQUEST FOR ADMISSION NO. 12: Admit that MicroAire did not provide consumers with
16 any warnings that the 2910-100 surgical drill may cause noise induced hearing loss.

17 RESPONSE:

18 Objection. The term "noise induced hearing loss" is vague and undefined.
19 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny
20 MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had a duty to warn
21 of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic drill caused noise
22 induced hearing loss. Admit warnings did not address possibility of noise induced hearing loss.
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1 REQUEST FOR ADMISSION NO. 13: Admit that the instructional manual(s) provided with the
2 MicroAire 2910-100 surgical drill did not inform consumers to utilize hearing protection while
3 operating the product.

4 RESPONSE:

5 Deny MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had
6 a duty to warn of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic
7 drill caused noise induced hearing loss. Admit that warnings contained in the instruction
8 manual(s) provided with the MicroAire 2910-100 surgical drill did not address utilizing hearing
9 protection while operating the product.
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14 REQUEST FOR ADMISSION NO. 14: Admit that the instructional manual(s) provided with the
15 MicroAire 2910-100 surgical drill did not instruct consumers that the product may cause noise
16 induced hearing loss.

17 RESPONSE:

18 Objection. The term "noise induced hearing loss" is vague and undefined.
19 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny
20 MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had a duty to warn
21 of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic drill caused noise
22 induced hearing loss. Admit instruction manual(s) provided with the MicroAire 2910-100
23 surgical drill did not address alleged noise induced hearing loss.
24
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1 REQUEST FOR ADMISSION NO. 15: Admit that oral maxillofacial surgeons were the target
2 purchasers for the MicroAire 2910-100 surgical drill.

3 RESPONSE:

4 Admit.

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7 REQUEST FOR ADMISSION NO. 16: Admit that prior to working for MicroAire, John
8 Pascaloff was the product development manager for Hall.

9 RESPONSE:

10 Admit that prior to his employment at MicroAire, Mr. Pascaloff worked at Hall as a
11 Manager of Product Development.

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15 REQUEST FOR ADMISSION NO. 17: Admit that while employed by Hall, John Pascaloff's
16 job duties included the development of new Hall/ConMed Linvatec ("Hall") surgical
17 instruments.

18 RESPONSE:

19 Deny that Mr. Pascaloff was employed by ConMed Linvatec. Admit he was employed by
20 Hall. Admit his job duties included supporting the development of new Hall surgical
21 instruments.

1 REQUEST FOR ADMISSION NO. 18: Admit that John Pascaloff identified Hall's Surgairtome
2 Two as a competitive product to MicroAire's 2910-100 surgical drill prior to the 2910-100 being
3 discontinued.

4 RESPONSE:

5 Admit.

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8 REQUEST FOR ADMISSION NO. 19: Admit that the MicroAire's 2910-100 surgical drill did
9 not utilize a noise muffling system.

10 RESPONSE:

11 Objection. The term "noise muffling system" is vague and undefined. Notwithstanding
12 and subject to these objections, MicroAire responds as follows: Admit that the MicroAire 2910-
13 100 surgical drill did not utilize a muffler. Deny that it contained no means to decrease decibel
14 level.
15

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18 REQUEST FOR ADMISSION NO. 20: Admit that the MicroAire's 2910-100 surgical drill did
19 not contain component parts designed to lessen noise.

20 RESPONSE:

21 Objection. The term "lessen noise" is vague and undefined. Notwithstanding and subject
22 to these objections, MicroAire responds as follows: Admit that Mr. Pascaloff's deposition
23 contains the following testimony:
24

25 Q. . . . Are there any parts in this file, Exhibit 5, that were placed on the device in
26 order to lessen or reduce noise?

1 A. There are none.

2 Deny that counsel defined the term "lessen noise" in the deposition. Deny that the MicroAire
3 2910-100 surgical drill contained no component parts designed to decrease decibel level.

4
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6 REQUEST FOR ADMISSION NO. 21: Admit that while Pascaloff was employed by Hall, the
7 Surgairtome Two surgical drill utilized an exhaust muffling device.

8 RESPONSE:

9 Admit that the Surgairtome Two surgical drill utilized a device labeled as a "muffler"
10 during Mr. Pascaloff's employment at Hall. Deny that this device functioned as a muffler to
11 decrease decibel level.
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17 REQUEST FOR ADMISSION NO. 22: Admit that, while employed by Hall, John Pascaloff
18 signed off on the engineering design drawings for the exhaust muffling component of the
19 Surgairtome Two surgical drill.

20 RESPONSE:

21 Admit that Mr. Pascaloff signed engineering drawings for a component labeled as a
22 "muffler" while employed by Hall. Deny that this device functioned as a muffler to decrease
23 decibel level.
24

1 REQUEST FOR ADMISSION NO. 23: Admit that, according to John Pascaloff, one of the
2 purposes of the exhaust muffling device utilized by Hall on its Surgairtome Two surgical drill
3 was to lessen noise.

4 RESPONSE:

5 Objection. This request is vague and ambiguous. The term "lessen noise" is vague and
6 undefined. Notwithstanding and subject to these objections, MicroAire responds as follows:

7 Admit that Mr. Pascaloff's deposition contains the following testimony:

8 Q. And you had indicated earlier -- and this exhaust muffler, one of the purposes
9 behind this exhaust muffler was to lessen noise; correct?

10 A. Correct.

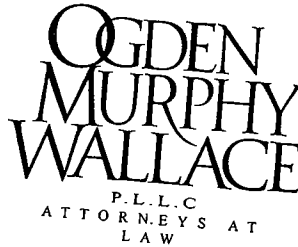
11 Deny that counsel defined the term "lessen noise" in the deposition. Deny that one of the
12 purposes of the exhaust muffling device utilized by Hall on its Surgairtome Two surgical drill
13 was to decrease decibel level.
14

15
16 AMENDED RESPONSES DATED this 16th day of April, 2010.

17
18 OGDEN MURPHY WALLACE, PLLC

19
20
21 By Emily Harris Gant
22 Lee Corkrum, WSBA No. 6585
23 Emily Harris Gant, WSBA No. 35679
24 1601 Fifth Avenue, Suite 2100
25 Seattle, Washington 98101
26 Tel.: (206) 447-7000
Fax: (206) 447-0215
egant@omwlaw.com
Attorneys for Defendant

EXHIBIT 5



EMILY HARRIS GANT
egant@omwlaw.com
206.447.7204

April 16, 2010

VIA EMAIL AND HAND DELIVERY

Marty McLean

HAGENS BERMAN SOBOL SHAPIRO
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Re: *Erickson v. MicroAire*

Dear Mr. McLean:

Enclosed please find Amended Responses to Plaintiffs' First Requests for Admission.

It is our position that the original Responses were true and accurate. We have evaluated your concerns and amended for clarity, however.

We are troubled by the timing of your Motion to Compel. We promised to timely amend by Friday, April 16, 2010, and have done so. As such, your Motion to Compel "jumped the gun."

Regardless, we trust that the Amended Responses alleviate your concerns, and that you will strike the Motion to Compel. Please provide written confirmation of your intent, such that we need not oppose your motion.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.

A handwritten signature in cursive script, appearing to read 'Emily Harris Gant', is written over the typed name.

Emily Harris Gant

EHG

cc: Tony Shapiro